IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17-01-2006

CORAM

THE HONOURABLE MR. JUSTICE P.K. MISRA
AND
THE HONOURABLE MRS. JUSTICE CHITRA VENKATARAMAN

WRIT PETITION NO.29444 OF 2003

Chairman,
Railway Board,
Government of India,
New Delhi. .. Petitioner

Vs.

1. P. Chandrasekaran
   S/o.C. Ponnusamy
   Retd. Office Superintendent,
   No.11/4, West Main Road,
   Gopal Colony, Chennai 82.

2. The Registrar,
   Central Administrative Tribunal,
   High Court Buildings,
   Chennai 600 104. .. Respondents

Petition filed under Article 226 of the Constitution of India for the issuance of writ of Certiorari to call for the records of the 2nd Respondent/Tribunal relating to the order dated 13.6.2003 passed in O.A.No.902 of 2002 and quash the same as illegal and without jurisdiction.

For Petitioner : Mr.V. Radhakrishnan
For Respondent-1 : Mr.M. Thamizhavel

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O R D E R

(Order of the Court was made by P.K. MISRA, J)

The present writ petition has been filed by the Chairman, Railway Board, Government of India challenging the order passed by the Central Administrative Tribunal in O.A.No.902 of 2002 whereunder the Tribunal has allowed the Original Application filed by the present Respondent No.1.

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2. The relief sought for in the said Original Application was for pay protection, i.e., refixation of basic as Rs.128/- in time scale of Rs.110-180 with effect from December, 1964 and allied pensionary benefits.

3. The facts relating to the present writ petition, which is filed against the order passed in the said Original Application, are as follows :-

The applicant before the Central Administrative Tribunal, hereinafter referred to as "the employee" for convenience, was working as a Lower Division Clerk in the Ministry of Health, Government of India in the pay scale of Rs.110 - 180. In December, 1964, on being selected by the Railway Service Commission, such employee was appointed as a clerk in Grade-II in Integral Coach Factory in the pay scale of Rs.110-180. By the time of leaving the former service, he was drawing basic pay of Rs.128/-. Such employee retired with effect from 31.7.1996. In the Original Application it was stated by the employee that he had made repeated representations for protection of pay, but they were not considered by the Department. The grievance raised by him before the Labour Court of Central Government was also dismissed. Subsequently, the employee had moved the Pension Adalath in the year 2001, but the Pension Adalath also gave a reply in negative. In the Original Application it was indicated that he had made several representations between 1965 and 1996, but no proper reply had been given. On the basis of the aforesaid allegations, the Original Application was filed before the Central Administrative Tribunal on 9.9.2002.

4. A reply statement was filed on behalf of the present petitioner in such O.A.No.902 of 2002. In such reply statement it was specifically pleaded that an order rejecting the claim of the employee had been passed on 3.12.1968 and therefore the Original Application was barred by limitation in view of the provisions contained in Section 21 of the Administrative Tribunals Act. It was also indicated that the employee had agitated the matter before the Central Government Labour Court by way of C.P.No.56 of 1976 under Section 33-C(2) of the Industrial Disputes Act, which was dismissed in 1977 and thereafter the employee had kept quiet till his retirement in July, 1996. It was further stated that the Scheme for considering the past services rendered in any other Government Department for the purpose of protection of pay was introduced with effect from 17.6.1965, which was only applicable prospectively and in view of the specific provision contained in such order, the past cases should not be re-opened. It was further indicated that the rejection of prayer of the petitioner in the Pension Adalath cannot give rise to a fresh cause of action and therefore the Original Application should be dismissed.

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5. Under the impugned judgment, the Tribunal accepted the contention of the employee that he was entitled to pay protection and therefore his pay should have been fixed at Rs.128/- in the scale of Rs.110-180 at the time of his appointment under the Railways. On the basis of the aforesaid conclusion, the Original Application was allowed in full.

6. So far as the question of limitation is concerned, the Tribunal observed :-

> " In so far as the question relating to delay and laches are concerned, it is now settled law that pay fixation is a continuing cause of action and therefore, there can be no rejection on the ground of delay. In addition, it is not as if the applicant had kept quiet all along and raised the issue afresh now. Admittedly, he has been agitating this matter right from 1968 onwards but to no avail and therefore we hold that there is no delay in the present case."

7. Learned counsel appearing for the Railways has raised two contentions. It is first contended by him that in view of the provisions contained in Section 21(1) of the Administrative Tribunals Act, the Original Application must be taken to be barred by limitation and even though such a point was specifically raised by the present petitioner, the Tribunal has glossed over the matter by examining the question in perspective of principles relating to laches, but the Tribunal has not however specifically considered as to whether the claim for protection of pay, which had been specifically rejected in 1968, was barred by limitation. It is further submitted that the observation of the Tribunal that pay fixation is a continuous cause of action and therefore there can be no rejection on the ground of delay cannot be sustained in law as the prayer for pay fixation has been specifically rejected. Learned counsel for the petitioner has also submitted that even on merit the conclusion of the Tribunal that the employee was entitled to pay protection by virtue of subsequent Office Memo dated 17.6.1965 is not correct as the employee had entered into service of the Railways on 9.12.1964, before introduction of the Office Memo dated 17.6.1965. It has been further submitted by him that the decision of the Supreme Court reported in (1983) 1 SCC 305 (D.S. NAKARA v. UNION OF INDIA) has been subsequently distinguished in several decisions of the Supreme Court reported in (1994) 4 SCC 68 (UNION OF INDIA v. P.N. MENON AND OTHERS), (1998) 8 SCC 30 (V. KASTURI v. MANAGING DIRECTOR, STATE BANK OF INDIA, BOMBAY AND ANOTHER) and JT 2005 (7) SC 301 (STATE OF PUNJAB AND OTHERS v. AMAR NATH GOYAL AND OTHERS).

8. It is convenient to take up the second contention first as it relates to the basic merit of the contentions raised in the Original Application as well as in the present writ petition. There is no dispute that the employee before being selected and employed under the Railways was working as Lower Division Clerk in the Ministry of Health, Government

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of India, in the same scale of Rs.110 - 180 and at the time when he was selected and employed under the Railways, he was drawing pay of Rs.128/-.

9. The main contention of the Railways before the Tribunal and reiterated before us is based on the Office Memorandum No.3379 dated 17.6.1965 and on the basis of the said O.M. it is submitted that the order was only prospective and past cases cannot be re-opened. It is profitable to quote the entire order, which is to the following effect :-

> " ... The undersigned is directed to say that the question whether the benefit of past service for purposes of fixation of pay can be given to Government servant who resigns his post before taking up appointment in the new post in the same or another Department has been under the consideration of the Government of India. Normally, the benefit of past service is given only in those cases where such service has not been terminated by resignation/removal/dismissal. The President is however, pleased to decide that in cases where Government servants apply for posts in the same or another departments through proper channel and on selection, they are asked to resign the previous posts for administrative reasons, the benefit of past service may, if otherwise admissible under rules, be given for purposes of fixation of pay in the new post treating the resignation as a 'technical formality'.
>
> The pay in such cases may be fixed under F.R.27.
>
> 2. The orders will have effect from the date of issue and past cases will not be reopened. Outstanding cases may, however, be dealt with in accordance with these orders.
>
> 3. In their application to the persons serving in the Indian Audit and Accounts Department, these orders issue after consultation with the Controller and Auditor General of India."

10. There cannot be any dispute that if the aforesaid Memorandum is applied, the employee is entitled to claim pay protection as all other conditions are satisfied. Admittedly the employee had applied for selection through proper channel and he had to resign his post under another Department of the very same Central Government. Therefore, the benefit of past services is to be given for the purpose of fixation of pay in the new post by treating the resignation as a technical formality'.

11. Learned counsel for the petitioner has however placed strong reliance upon paragraph 2, where it is indicated that "the orders will have effect from the date of issue and past cases will not be reopened". It is however significant to note that in the very same paragraph 2, it is indicated "Outstanding cases may, however, be dealt with in accordance with these orders." The entire paragraph 2 has to be read as a whole and not in a disjointed manner. The expression "Outstanding cases may, however, be dealt with in accordance with these orders" can only mean that

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such clarification would be applicable to the employees who are still continuing in service on the date of issuance of such clarification. Even if a more strict view is taken, it can only mean that if any case is finally decided before introduction of such memo, such case would not be reopened.

12. In the present case, it is not disputed that the representation of the employee was rejected by the Railway Board on 3.12.1968. There is no other material to indicate that in fact any final decision had been taken rejecting the representation of the employee before 17.6.1965. The provision being beneficial, is to be construed in a liberal manner.

13. Having regard to all these aspects, we are unable to accept the submission made by the learned counsel for the petitioner that the employee was not entitled for pay protection. The decisions relied upon by the learned counsel for the petitioner before us are not applicable to the facts of the present case. Therefore, in our opinion, the Tribunal was justified in its conclusion that the benefit of pay protection was available to the employee.

14. The above conclusion, however, is not the end of the matter. The question of limitation, so far as payment of arrears of salary on the basis of such pay protection is concerned, loomed large before the Tribunal. Such a plea was specifically taken by the present petitioner. Even otherwise in view of the provisions contained in Section 3 of the Limitation Act, the Tribunal was bound to consider as to whether the claim made by the employee was within the period of limitation.

15. Section 21 of the Administrative Tribunals Act,1985 being relevant, is extracted hereunder :-

> "21. Limitation. - (1) A Tribunal shall not admit an application,-
>
> (a) in a case where a final order such as is mentioned in clause (a) of sub-section (2) of section 20 has been made in connection with the grievance unless the application is made, within one year from the date on which such final order has been made;
>
> (b) in a case where an appeal or representation such as is mentioned in clause (b) of sub-section (2) of section 20 has been made and a period of six months had expired thereafter without such final order having been made, within one year from the date of expiry of the said period of six months.
>
> (2) Notwithstanding anything contained in sub-section (1), where-
>
> (a) the grievance in respect of which an application is made had arisen by reason of any order made at any time during the period of three years immediately preceding the date on which the

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jurisdiction, powers and authority of the Tribunal becomes exercisable under this Act in respect of the matter to which such order relates; and

(b) no proceedings for the redressal of such grievance had been commenced before the said date before any High Court,

the application shall be entertained by the Tribunal if it is made within the period referred to in clause (a), or, as the case may be, clause (b), of sub-section (1) or within a period of six months from the said date, whichever period expires later.

(3) Notwithstanding anything contained in sub-section (1) or sub-section (2), an application may be admitted after the period of one year specified in clause (a) or clause (b) of sub-section (1) or, as the case may be, the period of six months specified in sub-section (2), if the applicant satisfies the Tribunal that he had sufficient cause for not making the application within such period."

16. In the present case, the claim of the employee for pay protection and payment on that basis was rejected as early in December, 1968. It is of course true that at that time the Administrative Tribunal was not in existence and, therefore, the employee could have challenged such matter only by filing a writ petition. It is also true that for filing a writ petition, no specific period of limitation is prescribed, but it is well settled that a writ petition should be filed without any laches. Moreover, the principle of waiver or acquiescence is applicable in a writ petition. Even though the claim of the employee was categorically rejected in 1968, he kept quiet and had not challenged such order for about 30 years, before his retirement in July,1996. Moreover, the employee had filed an application under Section 33-C(2) of the Industrial Disputes Act in 1976, which was rejected in 1977. Such rejection was also never challenged. It is thus evident that the employee had accepted the rejection of his representation regarding pay protection and obviously there was waiver of his right. Even after establishment of the Central Administrative Tribunal, no application was filed within the period of one year as stipulated in Section 21 and the employee retired in the year 1996. It is thus obvious that even though as a matter of law he was entitled to pay protection, he could not have enforced his right to get additional salary on the basis of pay protection, as such claim for money was obviously barred by time. Once such claim was rejected, the employee cannot take refuge under the plea of continuing cause of action. His right to claim differential amount in salary on the basis of pay protection become barred by limitation by virtue of Section 21 of the Administrative Tribunals Act. Therefore, to that extent the direction of the Tribunal allowing the application, which obviously includes a direction for payment of arrears of salary, must be taken to be invalid.

17. It is of course true that the Tribunal had jurisdiction to condone the delay. However, in the application itself no prayer had been made for condonation of delay nor any cause had been indicated showing any

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sufficient reason for non-filing of the application within the stipulated period of limitation. The Tribunal has also not purported to condone any delay. On the other hand, the Tribunal has apparently applied the principle of laches and has also wrongly assumed that there was continuing cause of action so far as protection of pay scale was concerned. In our opinion, the right to get higher pay for the earlier period, which was specifically rejected, had become time barred and a suit at that stage could not have been filed. After introduction of the Administrative Tribunals Act, such an application could not have been filed beyond the period contemplated under Section 21. That part of the order is required to be set aside.

18. So far as the pension is concerned, the matter stands on a slightly different footing. The right to receive pension is a continuing right. The employee after having retired in 1996 has of course kept quiet till 2001, but thereafter he had agitated the matter for the first time in 2001. The employee approached the Pension Adalath in 2001 and therefore he is entitled to pension on the basis of proper pay payable at least from 19th October, 2001, when he had approached the Pension Adalath.

19. Learned counsel appearing for the petitioner had however submitted that since the employee's right to pay protection was barred by limitation, the consequential relief of claiming pension on the basis of such pay protection should be taken to be barred by limitation. We are unable to accept such submission made by the learned counsel for the petitioner.

20. Law is well settled that the principle of limitation bars the remedy but does not extinguish the right, save and except Section 27 of the Limitation Act, by virtue of which not only the remedy is barred but a right accrues in favour of a person who has prescribed his right over immovable property by the principle of adverse possession. The said principle obviously has no application in the present case. In the present case, even though the right of the employee to receive increased salary on the basis of pay protection became barred by limitation, the inherent right was not extinguished. Obviously he cannot claim any arrears of salary before July, 1996, when he retired, as all those claims were barred by limitation under the Limitation Act as well as under Section 21 of the Administrative Tribunals Act. However, his right regarding pension on the basis of protection of pay scale remained as such. The right to claim pension on the basis of such pay protection at least with effect from 19.10.2001 cannot be said to be barred by limitation.

21. In such view of the matter, we are inclined to grant a portion of the relief claimed by the employee, while rejecting his right to get arrears of salary for the period prior to July, 1996 as such right was clearly barred by limitation.

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22. Accordingly the writ petition is allowed in part. It is observed that the employee is not entitled to any arrears of salary on the basis of pay protection. However, the employee is entitled to revised pensionary benefit with effect from 19.10.2001 by notionally giving benefit of pay protection and by fixing his initial pay at Rs.128/- in December, 1964 and thereafter notionally calculating the pay payable to him. The arrears of pension on the basis of such revised calculation shall be payable with effect from 19.10.2001. The arrears on the aforesaid basis till the end of March, 2006 shall be calculated and paid within a period of three months from the date of receipt of the present order. The revised pension on the basis of such order for the month of April, 2006 always shall be paid regularly with effect from the due date applicable. There shall be no order as to costs.

dpk

Sd/-
Asst. Registrar.

/true copy/

Sub Asst. Registrar.

To

The Registrar,
Central Administrative Tribunal,
High Court Buildings,
Chennai 600 104.

+ 1 CC To Mr.V.Radhakrishnan, Advocate, SR NO.1525.
+ 1 CC To Mr.M.Thamizhavel, Advocate, SR NO.1355.

ORDER IN WP.NO.29444/2003

MRD(CO)
RVL 17.04.2006

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